

LETTER OF INTENT

for

**APPLICATION FOR ZONING MODIFICATION AND
CONCURRENT VARIANCES**

for

± 6.22 acres of land
known as

5660 New Northside Drive

City of Sandy Springs
Land Lot 205, 17th District, Fulton County, Georgia

Zoned C-2 Commercial -- Conditional

Submitted on behalf of

ICE 5660, LLC

by

Sharon A. Gay, Esq.
Daniel Baskerville
McKenna Long & Aldridge LLP
303 Peachtree Street, N.E.
Suite 5300
Atlanta, Georgia 30308
404.527.4000
sgay@mckennalong.com
dbaskerville@mckennalong.com

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ATLANTA 5615067.3

INTRODUCTION

This Application is submitted for a 6.22-acre parcel of land located in the northwest quadrant of the intersection of New Northside Drive and the westbound I-285 ramp in the City of Sandy Springs. The property is located in Land Lot 205, 17th District of Fulton County and is known as 5660 New Northside Drive (the "Property"). A legal description of the Property is attached as **Exhibit A**. The Property is zoned C-2 (Commercial)--Conditional. The existing office building, surface parking, and parking deck comprise the headquarters of Intercontinental Exchange, Inc. ("ICE"), the leading network of regulated exchanges and clearinghouses for financial and commodity markets. ICE is a publicly listed company on The New York Stock Exchange and is an S&P 500 company with over 600 people employed at the Property. ICE 5660, LLC, Property owner and applicant (the "Applicant"), seeks approval for a zoning modification to the current zoning conditions and four concurrent variances for the purpose of revising and updating the site plan and permitting improvements needed for the current use of the Property.

This document is submitted as the Statement of Intent required by Georgia law and the Zoning Ordinance of the City of Sandy Springs.

ZONING AND DEVELOPMENT HISTORY OF THE PROPERTY

The Property was once part of a larger tract of land that included the parcels north and east of the Property. The eastern parcel was developed for office use in the 1980s and is now occupied by ADP. Fidelity Management Investment Company developed the northern parcel for office use. That development is now known as Powers Pointe. Due to the increased traffic at the New Northside Drive/I-285 interchange resulting from these and nearby developments, property owners worked with Fulton County and the Georgia Department of Transportation (GDOT) to plan and implement interchange improvements in the 1980s.

As part of this general development activity in the area, in 1984 the Property was rezoned to C-2 Commercial – Conditional to allow for development of an office building and a hotel. A companion special use permit set building heights at 12 stories. Zoning modifications were approved in 1987. The existing office building and parking structure were developed thereafter. In 1996, the Property was again rezoned for two office/and or financial establishments and accessory uses at a maximum density of 94,534 square feet of gross floor area per acre zoned or a total gross floor area of 588,000 square feet, whichever is less (Z-96-030). A two-part concurrent variance (VC-96-031) was approved to reduce the required building setback from 40 ft. to 0 ft. on the south property line and to exempt existing and proposed buildings and parking from the 10-foot wide landscape strip requirement along this southern property line.

A 1998 zoning modification (Z-98-046) allowed the second building to be either an office use or a 250-room hotel. Overall approved square footage, heights, and variances were unchanged from the 1996 approvals. Neither a second office building nor a hotel has been built on the Property.

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ATLANTA 5470107.3

CURRENT AND PROPOSED USES AND CHARACTERISTICS OF USE

The Applicant purchased the Property in July 2013 for use as the headquarters of ICE, the leading network of regulated exchanges and clearinghouses for financial and commodity markets. ICE owns and operates 23 regulated exchanges and marketplaces: ICE futures exchanges in the United States, Canada and Europe, Liffe futures exchanges in the United States and Europe, The New York Stock Exchange, Equity options exchanges, OTC energy, and credit and equity markets. ICE also owns and operates five central clearing houses: ICE Clear Europe, ICE Clear U.S., ICE Clear Canada, ICE Clear Credit, and The Clearing Corporation.

The Applicant has been planning for the optimal use of the Property to safely and efficiently house the operations of ICE and has implemented some improvements. The business operations conducted at ICE are central to the functioning of the financial markets in the United States and internationally; accordingly, ICE must ensure no lapse in operations occurs. To protect its operations and provide power redundancy, the Applicant constructed a concrete pad and installed two generators and two Georgia Power transformers on the east side of the building adjacent to the interchange exit ramp (the "Generator Yard"). The concrete pad is sized to accommodate a third generator. The Applicant plans to encase the generators with black vinyl-coated hurricane fencing and plant evergreens around the fence to provide additional screening. In addition, the Applicant plans to erect a 6-ft. steel perimeter fence around the entire Property for enhanced security and to expand the ground floor level of the building on the west side to relocate the cafeteria.

The Applicant intended to locate the Generator Yard beyond the required 40 ft. setback. However, while the Generator Yard was under construction it was discovered, after significant research by ICE in coordination with City of Sandy Springs staff, that the property immediately adjacent to the Generator Yard is owned by GDOT. Consequently, the Applicant had inadvertently constructed the Generator Yard within the required setback. ICE attempted to purchase this property from GDOT. After a lengthy review, GDOT officials concluded they should retain the land for probable future needs relating to the highway system. However, they have agreed to work with the Applicant to secure an encroachment permit that would allow ICE to landscape and maintain this adjacent property.

The Applicant now seeks to update the previously approved zoning site plan to incorporate the expansion of the existing building and to reflect the intention that if built in the future, the second approved building would be an office building, not a hotel. Furthermore, given the recent discovery regarding the setback and the inability to purchase the GDOT property, the Applicant is seeking a concurrent variance to reduce the setback along the east property line. The Applicant also is seeking two other concurrent variances regarding the Generator Yard fence and one to allow a portion of the security fence to be erected within the GDOT right-of-way.

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Specifically, the Applicant requests the following:

Zoning Modifications:

- 1) Revise existing zoning condition 1.a. of the 1998 rezoning (Z-98-046) to delete the language allowing for a 250-room hotel so that the condition will read: "Two office buildings and accessory uses at a maximum density of 94,534 square feet of gross floor area per acre zoned or a total gross floor area of 588,000 square feet, whichever is less" and
- 2) Revise existing zoning condition 2.a. of the 1998 rezoning (Z-98-046) by deleting the site plan and substituting the site plan prepared by Heery Design dated January 27, 2015 and submitted with this application (the "Site Plan").

Concurrent Variances:

- 1) Reduce the required building setback along the east property line from 40 ft. to 0 ft. (Article IX, Section 9.2.3);
- 2) Increase the allowed height of the fence around the Generator Yard from 8 ft. to 13 ft. (Article IV, Section 4.11.E.)
- 3) Reduce the required setback for the Generator Yard fencing from 3 ft. to 0 ft. (Article IV, Section 4.11.F.); and
- 4) Allow a security fence to be located in the public right-of-way (the GDOT property) (Article IV, Section 4.3.5).

JUSTIFICATION

Zoning Modifications:

In previous years, prior Property owners have considered developing a hotel on the Property. Now that the Property is dedicated for use as ICE headquarters, the Applicant wishes to modify Zoning Condition 1.a. and 2.a. and adopt the Site Plan to make clear that the previously approved second building, if constructed, will be an office building. The parking requirements and allocations have been adjusted to accommodate two office buildings. If a second office building is developed, structured parking will be added as shown on the Site Plan. Additionally, the Applicant wishes to expand the ground floor of the existing building by approximately 3160 sq. ft. No increase in total approved square footage or height is proposed.

Concurrent Variances:

Article XXII, Section 22.3.1 of the City of Sandy Springs Zoning Ordinance provides that variances may be granted upon a showing that:

- A. Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purposes and intent of the Zoning Ordinance; or

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B. The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public.

The Applicant respectfully submits that both standards are met in this case. All of the requested variances relate to the Generator Yard and the recently discovered circumstance of GDOT ownership of the property immediately to the east of the Generator Yard. As the Site Plan clearly depicts, the Property is irregularly shaped and bounded on all sides by roadways. The Property topography is varied, sloping down from the elevation of New Northside Drive. The office building housing the ICE headquarters and the parking deck were developed in these locations several decades ago. As discussed above, the generators are essential to the secure and efficient operations of ICE. Likewise, fencing of the Generator Yard and perimeter fencing for the entire Property are necessary to secure and protect the equipment, buildings, and operations of this worldwide financial institution.

The Generator Yard must be positioned on the east side of the existing building within the required setback for two reasons: 1) proximity to the building data and electrical rooms and 2) adequate land area to accommodate the generators and protective fencing. The building sits almost directly on the south property boundary, leaving no room for the Generator Yard. The sloping topography of the Property and the locations of the existing building entrance and parking deck preclude placement on the north side of the building. The west side of the building is infeasible because the area is too far from the data and electrical rooms to provide efficient connections. In addition, there is a large underground stormwater vault in this area that cannot support the weight of the Generator Yard. The combination of the irregular shape and topography of the Property and the locations and configuration of existing buildings compel placement of the Generator Yard in the east yard between the building and the GDOT right-of-way.

This necessary position of the Generator Yard in turn constrains the locations of the Generator Yard fence and security fence. Encasing the top and sides of the Generator Yard in fencing is necessary for public safety and for security of this equipment. Compromise of the Georgia Power transformers or the ICE generators would negatively affect and could disrupt the ICE-maintained global network of financial exchanges and marketplaces. Given the requisite number, size, and scale of the generators and concrete pad, there is not sufficient room on the Property to place the fencing the required distance of 3 ft. from the GDOT right-of-way. For the same reasons, in this area of the Property the perimeter security fencing for the building must be placed on the GDOT property. Otherwise, the southeastern corner of the Property boundary would not be adequately protected and secured. There is no room to place the security fencing on the Property because the Generator Yard extends to the Property line. Steel perimeter security fencing is critical to the protection of the transformers and generators, which are positioned directly adjacent to the I-285 exit. Furthermore, given the height of the generators, 13-ft. fencing around the Generator Yard is necessary to encase the entire yard so as to provide sufficient protection and security from criminal trespass or tampering with the power sources critical to ICE operations. The Generator Yard fencing will be screened with evergreen plantings.

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The Applicant submits that approval of these variances is in harmony with the general purposes and intent of the Zoning Ordinance. The presence of the ICE headquarters in the City of Sandy Springs enhances the image and stature of the City. ICE provides employment opportunities and contributes to the City's economic vitality. The Generator Yard and fencing are essential for the secure and efficient operations of ICE. Installation of the generators and fencing in the proposed locations will not block light or air or create any adverse visual impact. The Generator Yard is separated from the roadway by existing shrubs and evergreen trees and will be further shielded from view by new evergreen plantings.

CONSTITUTIONAL OBJECTIONS

The Applicant respectfully submits that the City of Sandy Springs Zoning Ordinance, to the extent that it classifies the Property in any way that would preclude development and use of the Property and the variances as proposed by this Application, is unconstitutional as a taking of property, a denial of equal protection, an arbitrary and capricious act, and an unlawful delegation of authority under the specific constitutional provisions later set forth herein. Any existing inconsistent zoning of the Property pursuant to the City of Sandy Springs Zoning Ordinance deprives the current owner of any alternative reasonable use and development of the Property. Additionally, a denial of the requested modifications and variances would deprive the owner of any reasonable use and development of the Property. Further, any attempt by the Planning Commission or Mayor and City Council to impose greater restrictions upon the manner in which the Property will be developed than presently exist would be equally unlawful.

Accordingly, Applicant submits that the current zoning and any other zoning of the Property save for what has been requested would constitute arbitrary and unreasonable uses of the zoning and police powers because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant. Further, denial of this Application would constitute a taking of the owner's private property without just compensation and without due process in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Further, Applicant respectfully submits that failure to approve the requested zoning modification and variances would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Property owner and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

Finally, Applicant respectfully submits that the governing authority of the City of Sandy Springs cannot lawfully impose more restrictive standards upon the development of the Property than presently exist because to do so would not only constitute a taking of the Property as set forth above, but also would amount to an unlawful delegation of their authority, in response to neighborhood opposition, in violation of Article IX, Section IV, Paragraph II of the Georgia Constitution.

This Application satisfies the prescribed test set out by the Georgia Supreme Court to be used in establishing the constitutional balance between private property rights and zoning and planning as an expression of the government's police power, See Guhl vs. Holcomb Bridge Road, 238 Ga. 322 (1977).

CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that this Application for Zoning Modification and Concurrent Variances be approved.

Submitted this 2nd day of February, 2015.

By:


Sharon A. Gay

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Community Development

ICE INTERCONTINENTAL EXCHANGE

HEERY
design

Heery International
690 Piedmont Street NE
Atlanta, GA 30300

project number
13188.00

ICE
Intercontinental Exchange
HQ Renovation

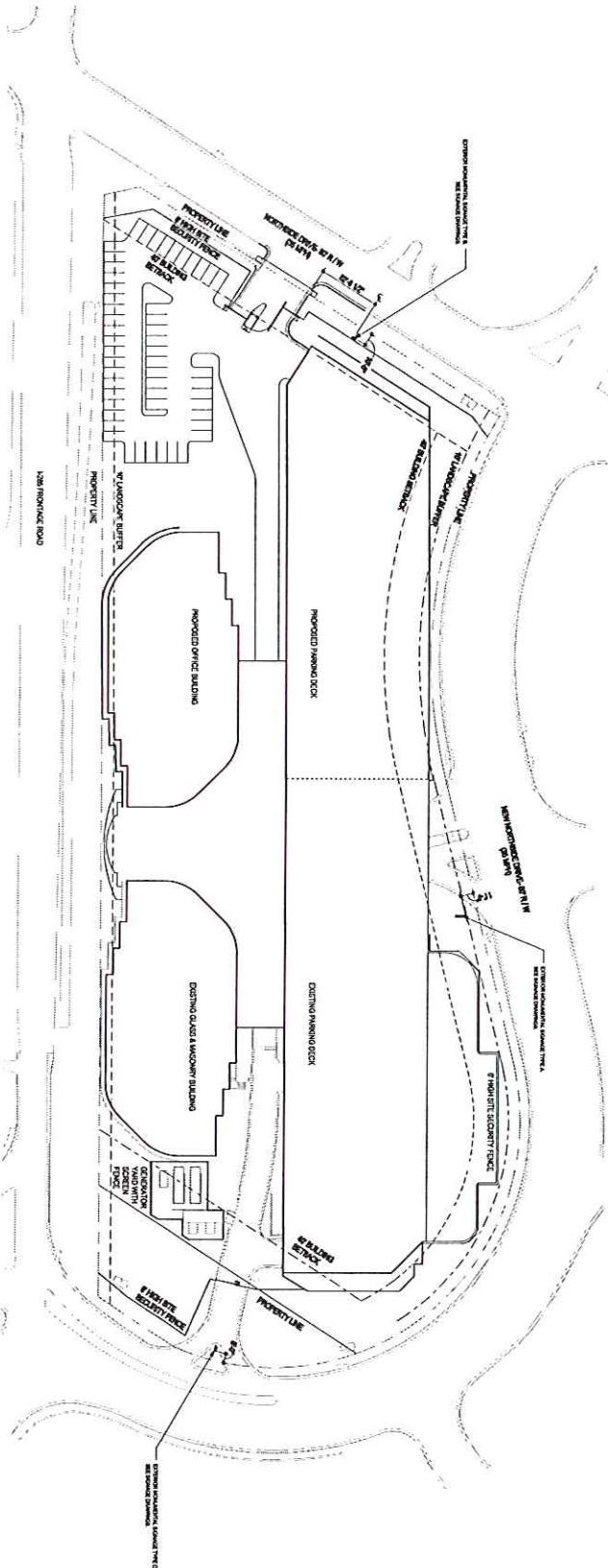
6620 New Northside Drive NW
Atlanta, GA 30328

ISSUED FOR CONSTRUCTION

Birth date

ZONING SITE PLAN
01 / 27 / 2015

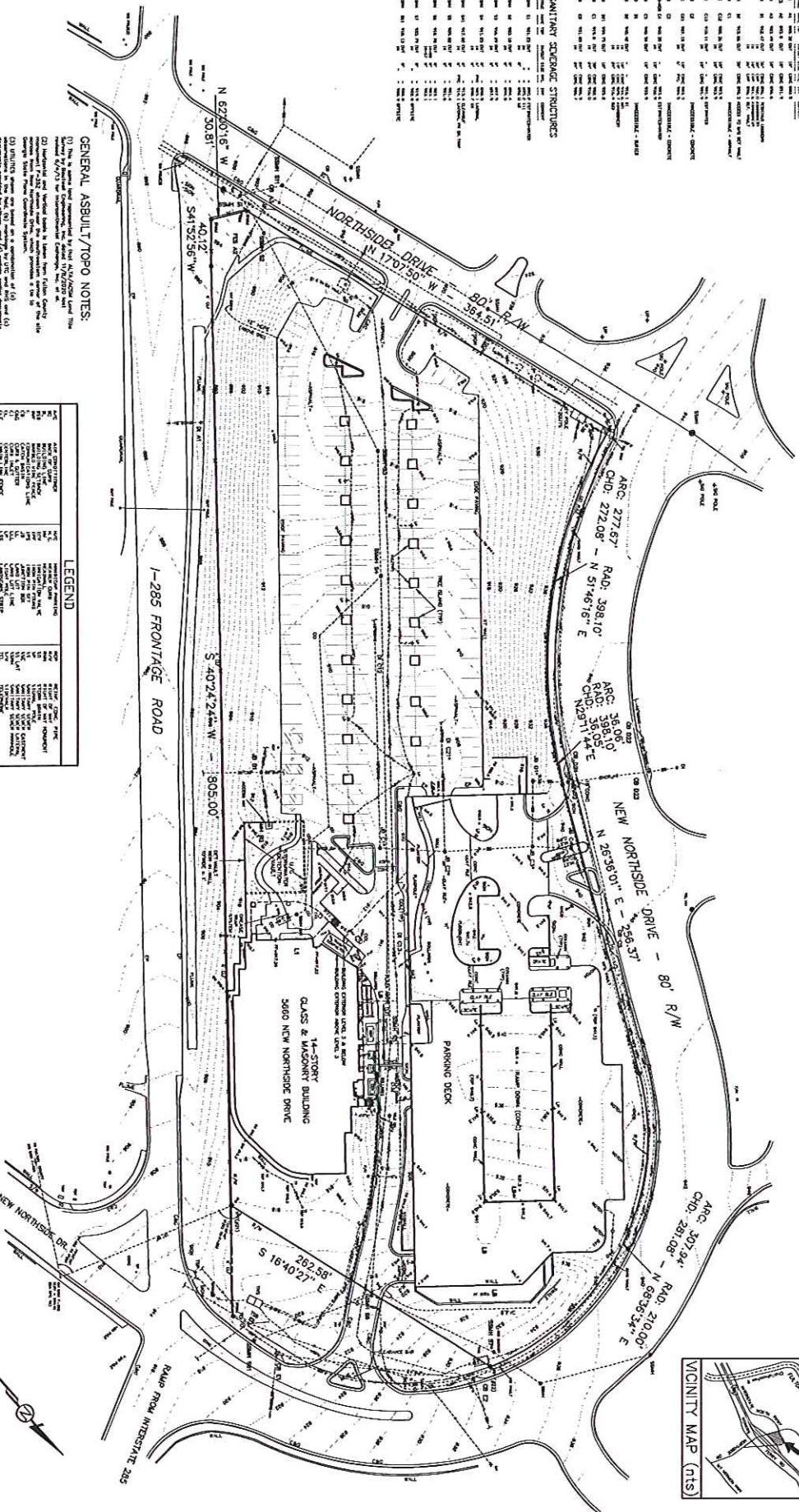
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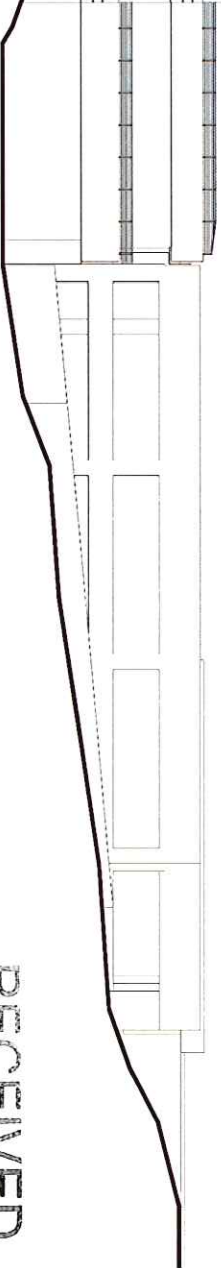
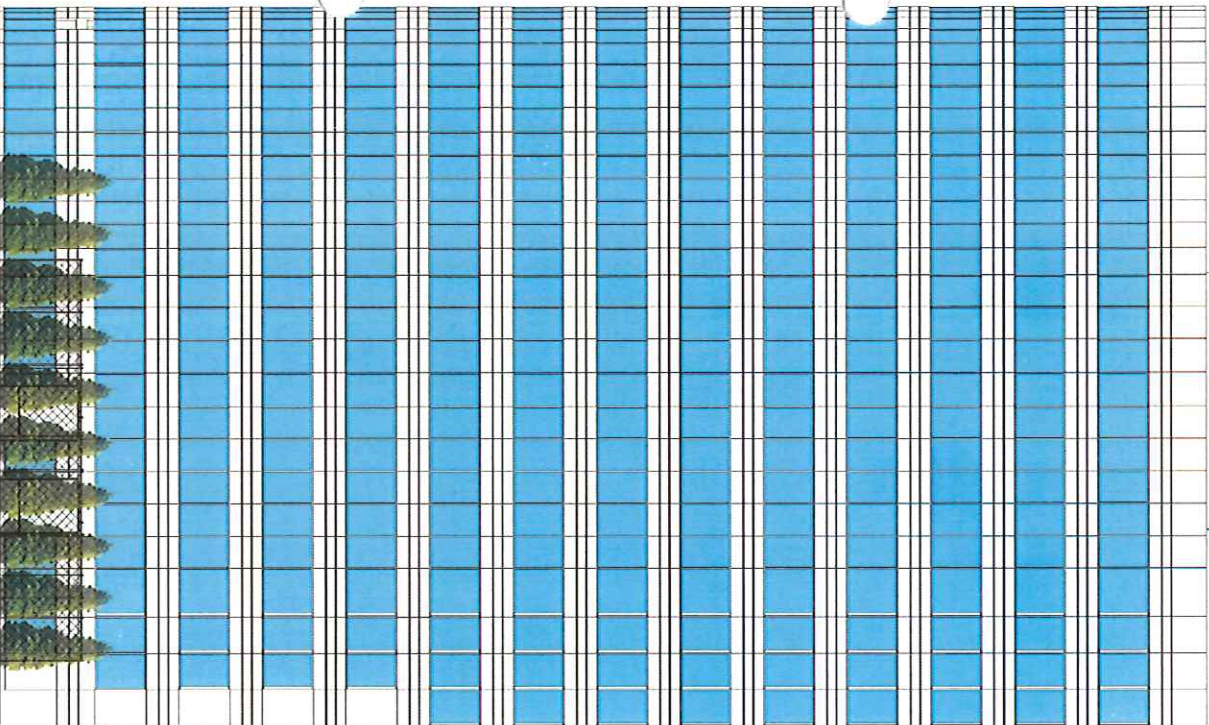
- (1) A 100-gram sample of a polymer with $M_n = 100,000$ and $M_w = 200,000$ is dissolved in 1 liter of solvent. The solution is then diluted to 2 liters. What is the new M_n and M_w ?
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BOUTWELL ENGINEERING, INC.

CIVIL ENGINEERING - LAND SURVEYING
034 Hunters Ridge, Jasper, Co 30143 - 706-692-3148
classroom, this is a professional room

ASBUILT-TOPOGRAPHICAL SURVEY
FOR INTERCONTINENTAL EXCHANGE, INC.
C/O HERODESIGN
Land Lot 205, 17th District, Fulton County, GA
in the City of Sandy Springs



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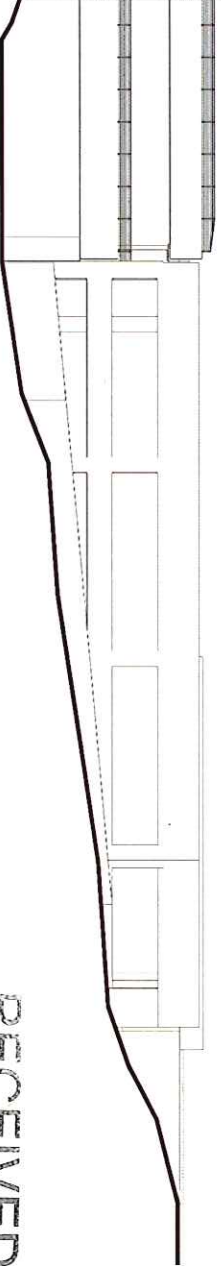
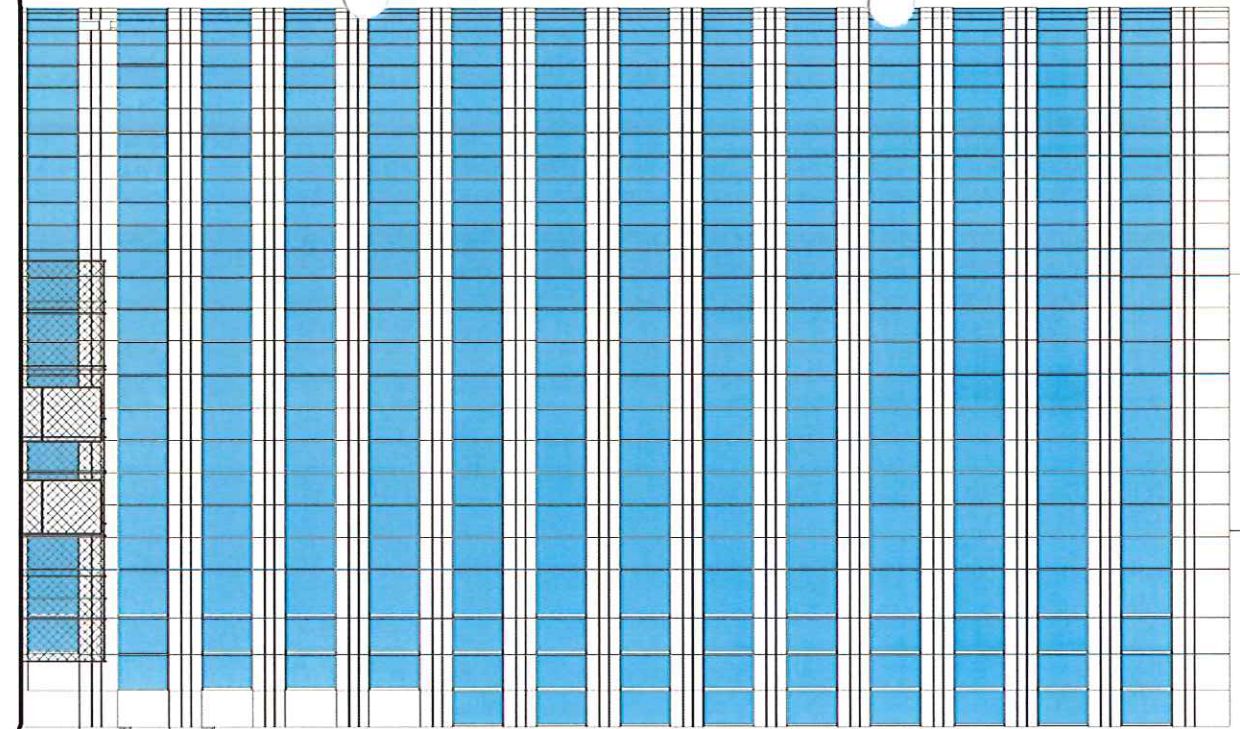
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INTERCONTINENTAL EXCHANGE 5660 NEW NORTHSIDE DRIVE

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INTERCONTINENTAL EXCHANGE 5660 NEW NORTHSIDE DRIVE

EAST ELEVATION

sign